

## Remarks

In the Action, the Examiner rejected claims 3 and 4 under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. In particular, the Examiner regards as unclear the use of the adjective "third" as a modifier of the element "client" in both claim 3 and claim 4. However, even taking into consideration the Examiner's "assumption" as to Applicant's intent, it is not clear to Applicant how claims 3 and/or 4 should be amended to address the Examiner's concern.

First, Applicant would point out that claim 3 depends indirectly from claim 1 by way of claim 2, whereas claim 4 depends directly from claim 1. Thus, since they are in separate and distinct claim chains, the subject matter of claim 3 is separate and distinct from the subject matter of claim 4. Considering only claim 3, it is clear that a "content server" multi-casts to both a "first content server" (per claim 1) and a "second content server" (per claim 2), and, in turn, the "first content server" multi-casts to a "first client" (per claim 1) while the "second content server" multi-casts to both a "second client" (per claim 2) and a "third client" (per claim 3). In contrast, considering only claim 4, it is clear that a "content server" multi-casts to a "first content server" (per claim 1), and, in turn, the "first content server" multi-casts to both a "first client" (per claim 1) and a "third client" (per claim 4).

Second, just because Applicant has chosen to use the ordinal number "third" as an adjective modifier for the "client" recited in claim 4 does not necessarily require that there be both a "first client" and a "second client" earlier in the claim chain. The suggestion offered by the Examiner, *i.e.*, to use the ordinal number "fourth" in claim 4, appears to Applicant to only exacerbate the problem. Indeed, if strict sequentiality were a requirement in claim drafting, the most appropriate ordinal number for use in claim 4 would seem to be "second". On the other hand, if strict sequentiality is not a requirement, then does it really matter how many intervening ordinal numbers may be skipped, so long as each claim chain is internally consistent?

In view of the decision of the Supreme Court in *Festo*<sup>i</sup>, Applicant is extremely hesitant to make *any* claim amendment relating strictly to nomenclature unless it is crystal clear, in the record, that such amendment is **not** one that "narrows" the scope of the claim. Should the Examiner continue of the opinion that the ordinal number used in claim 4 should be changed from "third" to "fourth" (or to any other ordinal number deemed appropriate by the Examiner), Applicant is willing to do so, but only on the condition that the Examiner clearly state, in the record, that such amendment will not result in any narrowing of the scope of claim 4.

In the Action, the Examiner also rejected claims 1-6 under 35 U.S.C. § 102 (e) as being anticipated by Huang. In particular, the Examiner has asserted that

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<sup>i</sup> *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 62 U.S.P.Q.2d 1705 (2002).

"Huang teaches a method and system (abstract) for multi-tier multi-casting via a public communication network", citing in support of such assertion Huang, col. 1, line 1 - col. 3, line 25. Applicant respectfully disagrees with such assertion in that there is no suggestion, much less teaching, in Huang relating to *multi-casting*, whether single-tier or multi-tier.

In drafting the present application, Applicant has "*italicize[d]* the first occurrence of each special term of art which should be familiar to those skilled in the art of network communication systems." (See, page 1, lines 18-20.) As noted above, one such term was "*multi-casting*". (See, page 2, line 22.) Accordingly, Applicant's independent claims 1 and 4, incorporating as each does the term "*multi-casting*", are expressly limited to that application.

As explained in the present application, "*multi-casting* [is] used for simultaneously deliver[ing], *point-to multi-point*, the same content to multiple clients." (See, page 2, lines 22-24.) Nothing in Huang either teaches or suggests that the content updating process described therein can be used to simultaneously deliver the same content to multiple clients. Indeed, as depicted in Figs. 4-6 and described in col. 8, lines 11-52, it is clear that Huang operates in a conventional *point-to-point* mode, making such simultaneity impossible.

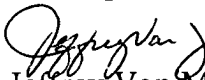
As explained in the present application, multi-casting is typically used to simultaneously cast live content in a continuous stream from the content server to all subscribed clients. (See, page 4, line 25, through page 5, line 3.) While Huang may be advantageously used to maintain local synchronicity with a slowly changing content base, such as a Lotus Notes database, it is neither adapted to, nor intended to, maintain local synchronicity with a continuously changing content stream. In that Huang pulls new content either on a particular schedule or in response to client demand, it is simply not adapted to perform even uni-casting, much less multi-casting.

With respect to the rejection of claims 1-6 as being anticipated by Huang, Applicant wishes to note that MPEP § 2131 provides:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. *Verdegaal Bros. v Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053, (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claims.

Since, as seen above, "each and every element as set forth the claim[s]" are not "found, either expressly or inherently described in a single prior art reference", the rejection of claims 1-6 under 35 U.S.C. 102 (e), based on Huang, is not well founded and should be withdrawn.

Respectfully submitted,  
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